



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 321

CORRECTED

THURSDAY, MARCH 5, 2009

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to the collection, storage, and use of DNA samples.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔Section 1. KRS 17.169 is repealed and reenacted to read as follows:

2 As used in this section and KRS 17.170 and 17.175, the following definitions shall apply:

3 (1) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen
4 from a person, as prescribed by administrative regulation, that is required to provide
5 a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the
6 Department of Kentucky State Police forensic laboratory for law enforcement
7 identification purposes and inclusion in law enforcement identification databases;
8 and

9 (2) "Authorized personnel" means an agent of state government who is properly trained
10 in DNA sample collection pursuant to administrative regulation.

11 ➔Section 2. KRS 17.170 is repealed, reenacted, and amended to read as follows:

12 (1) Any DNA sample collected pursuant to the law in effect prior to the effective date
13 of this Act[July 1, 2008,] shall be maintained and used pursuant to this section and
14 KRS 17.175 and 17.510.

15 (2) The following persons shall have a DNA sample collected by authorized
16 personnel:

17 (a) Any person convicted on or after the effective date of this Act[July 1, 2008,]
18 of a felony offense under the Kentucky Revised Statutes; or

19 (b) Any juvenile who was at least fourteen (14) years of age at the time of the
20 commission of the offense and who stands adjudicated delinquent of being
21 a public offender by a court of competent jurisdiction, of:

22 1. Any felony offense in KRS Chapter 510;

23 2. Incest as defined in KRS 530.020;

24 3. Criminal attempt or criminal conspiracy to commit an offense
25 identified in subparagraph 1. or 2. of this paragraph; or

1 **4. Being a juvenile sexual offender under KRS 635.510**~~[, being thirteen~~
 2 ~~(13) years of age or older at the time of the commission of the offense,~~
 3 ~~adjudicated as a public offender for an offense identified in KRS~~
 4 ~~439.3401(1) or 530.020 on or after July 1, 2008, or who is in the custody~~
 5 ~~of the Department of Corrections, the Department of Juvenile Justice, or~~
 6 ~~a local or county jail on or after July 1, 2008, based upon a conviction or~~
 7 ~~adjudication of an offense identified in this subsection, shall have a~~
 8 ~~DNA sample collected by authorized personnel].~~

9 (3) Any person who is required to register as a sex offender under KRS 17.510 who is
 10 not otherwise required to submit to a DNA sample collection under this section or
 11 KRS 17.510, including those persons convicted of a felony or adjudicated as a
 12 public offender on offenses in other jurisdictions as identified in KRS 17.510(6) and
 13 (7), shall have a DNA sample collected by authorized personnel.

14 (4) Any person who is required to provide a DNA sample pursuant to subsection (2) of
 15 this section and who is released from custody upon sentencing or adjudication shall
 16 immediately report to the local probation and parole office and shall have a DNA
 17 sample collected by authorized personnel.

18 (5) A DNA sample shall be obtained in an approved manner by authorized personnel, a
 19 physician, registered nurse, phlebotomist, medical technician, or medical
 20 technologist, and packaged with supplies and containers provided by the
 21 Department of Kentucky State Police forensic laboratory in accordance with
 22 administrative regulations promulgated by the cabinet. No civil liability shall attach
 23 to any person authorized to obtain the DNA sample as provided by this section as a
 24 result of the act of obtaining the DNA sample from any person, provided the
 25 procedure was done according to administrative regulations by the cabinet.

26 (6) Authorized personnel collecting DNA samples under this section or KRS 17.510
 27 are not engaging in the practice of medicine pursuant to KRS 311.550.

1 (7) Any person required to provide a DNA sample under this section or KRS 17.510
2 who, after receiving notice of the requirement to provide a DNA sample, knowingly
3 refuses to provide such DNA sample, shall be guilty of a Class A misdemeanor for
4 each separate violation of the offense.

5 (8) Any person who tampers or attempts to tamper with any DNA sample collected
6 under this section or its container without lawful authority shall be guilty of a Class
7 D felony.

8 ➔Section 3. KRS 17.175 is repealed and reenacted to read as follows:

9 (1) A centralized database of DNA (deoxyribonucleic acid) identification records for
10 convicted or adjudicated offenders, crime scene specimens, unidentified human
11 remains, missing persons, and close biological relatives of missing persons shall be
12 established in the Department of Kentucky State Police under the direction, control,
13 and supervision of the Department of Kentucky State Police forensic laboratory.
14 The established system shall be compatible with the procedures set forth in a
15 national DNA identification index to ensure data exchange on a national level.

16 (2) The purpose of the centralized DNA database is to assist federal, state, and local
17 criminal justice and law enforcement agencies within and outside the
18 Commonwealth in the identification, detection, or exclusion of individuals who are
19 subjects of the investigation or prosecution of sex-related crimes, violent crimes, or
20 other crimes and the identification and location of missing and unidentified persons.

21 (3) The Department of Kentucky State Police forensic laboratory shall receive, analyze,
22 and classify DNA samples received from the Department of Corrections, the
23 Department of Juvenile Justice, and other sources, and shall file the DNA results in
24 the centralized databases for law enforcement identification and statistical purposes.

25 (4) DNA identification records produced from the samples are not public records but
26 shall be confidential and used only for law enforcement purposes. DNA
27 identification records shall be exempt from the provisions of KRS 61.870 to 61.884.

1 (5) A person whose DNA profile has been included in the data bank pursuant to this
 2 chapter may request expungement on the grounds that the conviction or
 3 adjudication on which the authority for including the DNA profile was based has
 4 been reversed and the case dismissed, or that the person successfully completed the
 5 pretrial diversion program under KRS 533.258 and the charges were dismissed-
 6 diverted. The Department of Kentucky State Police shall expunge all identifiable
 7 information in the data bank pertaining to the person and destroy all samples from
 8 the person upon receipt of:

9 (a) A written request for expungement pursuant to this section; and

10 (b) Either:

11 1. A certified copy of the court order reversing and dismissing the
 12 conviction or adjudication; or

13 2. A certified copy of the court order deeming the charges dismissed-
 14 diverted.

15 (6) The cabinet shall promulgate administrative regulations necessary to carry out the
 16 provisions of the DNA database identification system to include procedures for
 17 collection of DNA samples and the database system usage and integrity.

18 (7) The Department of Kentucky State Police shall destroy all DNA samples that are
 19 not entered into the DNA database identification system.

20 (8) Any person who disseminates, receives, or otherwise uses or attempts to use
 21 information in the DNA database identification system, knowing that such
 22 dissemination, receipt, or use is for a purpose other than authorized by this section,
 23 shall be guilty of a Class D felony.

24 ➔Section 4. KRS 17.500 is repealed and reenacted to read as follows:

25 As used in KRS 17.500 to 17.580:

26 (1) "Approved provider" means a mental health professional licensed or certified in
 27 Kentucky whose scope of practice includes providing mental health treatment

1 services and who is approved by the Sex Offender Risk Assessment Advisory
2 Board, under administrative regulations promulgated by the board, to provide
3 comprehensive sex offender presentence evaluations or treatment to adults and
4 youthful offenders, as defined in KRS 600.020;

5 (2) "Cabinet" means the Justice and Public Safety Cabinet;

6 (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense
7 against a victim who is a minor" means any of the following offenses if the
8 victim is under the age of eighteen (18) at the time of the commission of the
9 offense:

- 10 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
- 11 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a
12 parent;
- 13 3. Sex crime;
- 14 4. Promoting a sexual performance of a minor, as set forth in KRS
15 531.320;
- 16 5. Human trafficking involving commercial sexual activity, as set forth in
17 KRS 529.100;
- 18 6. Promoting prostitution, as set forth in KRS 529.040, when the defendant
19 advances or profits from the prostitution of a person under the age of
20 eighteen (18);
- 21 7. Use of a minor in a sexual performance, as set forth in KRS 531.310;
- 22 8. Sexual abuse, as set forth in KRS 510.120 and 510.130;
- 23 9. Unlawful transaction with a minor in the first degree, as set forth in KRS
24 530.064(1)(a);
- 25 10. Any offense involving a minor or depictions of a minor, as set forth in
26 KRS Chapter 531;
- 27 11. Any attempt to commit any of the offenses described in subparagraphs 1.

1 to 10. of this paragraph; and

2 12. Solicitation to commit any of the offenses described in subparagraphs 1.
3 to 10. of this paragraph.

4 (b) Conduct which is criminal only because of the age of the victim shall not be
5 considered a criminal offense against a victim who is a minor if the
6 perpetrator was under the age of eighteen (18) at the time of the commission
7 of the offense;

8 (4) "Law enforcement agency" means any lawfully organized investigative agency,
9 sheriff's office, police unit, or police force of federal, state, county, urban-county
10 government, charter county, city, consolidated local government, or a combination
11 of these, responsible for the detection of crime and the enforcement of the general
12 criminal federal or state laws;

13 (5) "Registrant" means:

14 (a) Any person eighteen (18) years of age or older at the time of the offense or
15 any youthful offender, as defined in KRS 600.020, who has committed:

16 1. A sex crime; or

17 2. A criminal offense against a victim who is a minor; or

18 (b) Any person required to register under KRS 17.510; or

19 (c) Any sexually violent predator; or

20 (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250,
21 until the diversionary period is successfully completed;

22 (6) "Registrant information" means the name, including any lawful name change
23 together with the previous name, Social Security number, age, race, sex, date of
24 birth, height, weight, hair and eye color, fingerprints, DNA sample, a photograph,
25 aliases used, residence, electronic mail address and any instant messaging, chat, or
26 other Internet communication name identities, a brief description of the crime or
27 crimes committed, and other information the cabinet determines, by administrative

1 regulation, may be useful in the identification of registrants;

2 (7) "Residence" means any place where a person sleeps. For the purposes of this statute,
3 a registrant may have more than one (1) residence. A registrant is required to
4 register each residence address;

5 (8) "Sex crime" means:

6 (a) A felony offense defined in KRS Chapter 510, or KRS 530.020,
7 530.064(1)(a), 531.310, or 531.320;

8 (b) A felony attempt to commit a felony offense specified in paragraph (a) of this
9 subsection; or

10 (c) A federal felony offense, a felony offense subject to a court-martial of the
11 United States Armed Forces, or a felony offense from another state or a
12 territory where the felony offense is similar to a felony offense specified in
13 paragraph (a) of this subsection;

14 (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an
15 Alford plea to a sex crime as defined in this section, as of the date the verdict is
16 entered by the court;

17 (10) "Sexually violent predator" means any person who has been subjected to
18 involuntary civil commitment as a sexually violent predator, or a similar
19 designation, under a state, territory, or federal statutory scheme;

20 (11) "The board" means the Sex Offender Risk Assessment Advisory Board created
21 under KRS 17.554;

22 (12) "Victim" has the same meaning as in KRS 421.500;

23 (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen
24 from a person, as prescribed by administrative regulation, that is required to provide
25 a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the
26 Department of Kentucky State Police forensic laboratory for law enforcement
27 identification purposes and inclusion in law enforcement identification databases;

1 and

2 (14) "Authorized personnel" means an agent of state government who is properly trained
3 in DNA sample collection pursuant to administrative regulation.

4 ➔Section 5. KRS 17.510 is repealed, reenacted, and amended to read as follows:

5 (1) The cabinet shall develop and implement a registration system for registrants which
6 includes creating a new computerized information file to be accessed through the
7 Law Information Network of Kentucky.

8 (2) A registrant shall, on or before the date of his or her release by the court, the parole
9 board, the cabinet, or any detention facility, register with the appropriate local
10 probation and parole office in the county in which he or she intends to reside. The
11 person in charge of the release shall facilitate the registration process.

12 (3) Any person required to register pursuant to subsection (2) of this section shall be
13 informed of the duty to register by the court at the time of sentencing if the court
14 grants probation or conditional discharge or does not impose a penalty of
15 incarceration, or if incarcerated, by the official in charge of the place of confinement
16 upon release. The court and the official shall require the person to read and sign any
17 form that may be required by the cabinet, stating that the duty of the person to
18 register has been explained to the person. The court and the official in charge of the
19 place of confinement shall require the releasee to complete the acknowledgment
20 form and the court or the official shall retain the original completed form. The
21 official shall then send the form to the Information Services Center, Department of
22 Kentucky State Police, Frankfort, Kentucky 40601.

23 (4) The court or the official shall order the person to register with the appropriate local
24 probation and parole office which shall obtain the person's fingerprints, DNA
25 sample, and photograph. Thereafter, the registrant shall return to the appropriate
26 local probation and parole office not less than one (1) time every two (2) years in
27 order for a new photograph to be obtained, and the registrant shall pay the cost of

1 updating the photo for registration purposes. Any registrant who has not provided a
2 DNA sample as of July 1, ~~2009~~[2008], shall provide a DNA sample to the
3 appropriate local probation and parole office when the registrant appears for a new
4 photograph to be obtained. Failure to comply with this requirement shall be
5 punished as set forth in subsection (11) of this section.

6 (5) (a) The appropriate probation and parole office shall send the registration form
7 containing the registrant information, fingerprint card, and photograph, and
8 any special conditions imposed by the court or the Parole Board, to the
9 Information Services Center, Department of Kentucky State Police, Frankfort,
10 Kentucky 40601. The appropriate probation and parole office shall send the
11 DNA sample to the Department of Kentucky State Police forensic laboratory
12 in accordance with administrative regulations promulgated by the cabinet.

13 (b) The Information Services Center, upon request by a state or local law
14 enforcement agency, shall make available to that agency registrant
15 information, including a person's fingerprints and photograph, where
16 available, as well as any special conditions imposed by the court or the Parole
17 Board.

18 (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or
19 does not disseminate, registrant information in good faith compliance with the
20 requirements of this subsection shall be immune from criminal and civil
21 liability for the dissemination or lack thereof.

22 (6) Any person who has been convicted in a court of any state or territory, a court of the
23 United States, or a similar conviction from a court of competent jurisdiction in any
24 other country, or a court martial of the United States Armed Forces of a sex crime
25 or criminal offense against a victim who is a minor and who has been notified of the
26 duty to register by that state, territory, or court, or who has been committed as a
27 sexually violent predator under the laws of another state, laws of a territory, or

1 federal laws, or has a similar conviction from a court of competent jurisdiction in
2 any other country, shall comply with the registration requirement of this section,
3 including the requirements of subsection (4) of this section, and shall register with
4 the appropriate local probation and parole office in the county of residence within
5 five (5) working days of relocation. No additional notice of the duty to register shall
6 be required of any official charged with a duty of enforcing the laws of this
7 Commonwealth.

8 (7) If a person is required to register under federal law or the laws of another state or
9 territory, or if the person has been convicted of an offense under the laws of another
10 state or territory that would require registration if committed in this
11 Commonwealth, that person upon changing residence from the other state or
12 territory of the United States to the Commonwealth or upon entering the
13 Commonwealth for employment, to carry on a vocation, or as a student shall
14 comply with the registration requirement of this section, including the requirements
15 of subsection (4) of this section, and shall register within five (5) working days with
16 the appropriate local probation and parole office in the county of residence,
17 employment, vocation, or schooling. A person required to register under federal law
18 or the laws of another state or territory shall be presumed to know of the duty to
19 register in the Commonwealth. As used in this subsection, "employment" or "carry
20 on a vocation" includes employment that is full-time or part-time for a period
21 exceeding fourteen (14) days or for an aggregate period of time exceeding thirty
22 (30) days during any calendar year, whether financially compensated, volunteered,
23 or for the purpose of government or educational benefit. As used in this subsection,
24 "student" means a person who is enrolled on a full-time or part-time basis, in any
25 public or private educational institution, including any secondary school, trade or
26 professional institution, or institution of higher education.

27 (8) The registration form shall be a written statement signed by the person which shall

1 include registrant information, including an up-to-date photograph of the registrant
2 for public dissemination.

3 (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall
4 not be considered an address.

5 (10) (a) If the residence address of any registrant changes, but the registrant remains in
6 the same county, the person shall register, on or before the date of the change
7 of address, with the appropriate local probation and parole office in the county
8 in which he or she resides.

9 (b) 1. If the registrant changes his or her residence to a new county, the person
10 shall notify his or her current local probation and parole office of the
11 new residence address on or before the date of the change of address.

12 2. The registrant shall also register with the appropriate local probation and
13 parole office in the county of his or her new residence no later than five
14 (5) working days after the date of the change of address.

15 (c) 1. As soon as a probation and parole office learns of the person's new
16 address under paragraph (b)1. of this subsection, that probation and
17 parole office shall notify the appropriate local probation and parole
18 office in the county of the new address of the effective date of the new
19 address.

20 2. As soon as a probation and parole office learns of the person's new
21 address under paragraph (b)2. of this subsection, that office shall
22 forward this information as set forth under subsection (5) of this section.

23 (11) Any person required to register under this section who knowingly violates any of
24 the provisions of this section or prior law is guilty of a Class D felony for the first
25 offense and a Class C felony for each subsequent offense.

26 (12) Any person required to register under this section or prior law who knowingly
27 provides false, misleading, or incomplete information is guilty of a Class D felony

1 for the first offense and a Class C felony for each subsequent offense.

2 (13) (a) The cabinet shall verify the addresses of individuals required to register under
 3 this section. Verification shall occur at least once every ninety (90) days for a
 4 person required to register under KRS 17.520(2) and at least once every
 5 calendar year for a person required to register under KRS 17.520(3). If the
 6 cabinet determines that a person has moved without providing his or her new
 7 address to the appropriate local probation and parole office or offices as
 8 required under subsection (10)(a) and (b) of this section, the cabinet shall
 9 notify the appropriate local probation and parole office of the new address.
 10 The office shall then forward this information as set forth under subsection (5)
 11 of this section. The cabinet shall also notify the appropriate court, Parole
 12 Board, and appropriate Commonwealth's attorney, sheriff's office, probation
 13 and parole office, corrections agency, and law enforcement agency responsible
 14 for the investigation of the report of noncompliance.

15 (b) An agency that receives notice of the noncompliance from the cabinet under
 16 paragraph (a) of this subsection:

- 17 1. Shall consider revocation of the parole, probation, or conditional
 18 discharge of any person released under its authority; and
- 19 2. Shall notify the appropriate county or Commonwealth's Attorney for
 20 prosecution.

21 ➔Section 6. KRS 17.580 is repealed and reenacted to read as follows:

22 (1) The Department of Kentucky State Police shall establish a Web site available to the
 23 public. The Web site shall display:

24 (a) The registrant information, except for information that identifies a victim,
 25 DNA samples, fingerprints, and Social Security numbers, obtained by the
 26 Information Services Center, Department of Kentucky State Police, under
 27 KRS 17.510;

1 (b) The sex offender information, except for information that identifies a victim,
 2 DNA samples, Social Security numbers, and vehicle registration data,
 3 obtained by the Information Services Center, Department of Kentucky State
 4 Police, under KRS 17.510 prior to April 11, 2000; and

5 (c) The registrant's conviction, the elements of the offense for which the registrant
 6 was convicted, whether the registrant is currently on probation or parole, and
 7 whether the registrant is compliant or noncompliant.

8 The Web site shall be updated every day except for Saturdays, Sundays, and state
 9 holidays.

10 (2) The information pertaining to an individual shall be maintained on the Web site so
 11 long as that individual is registered in accordance with KRS 17.500 to 17.580.

12 (3) The following language shall be prominently displayed on the Web site: "UNDER
 13 KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS
 14 WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A
 15 CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE
 16 COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE
 17 SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS
 18 WEB SITE."

19 (4) (a) Any Department of Kentucky State Police employee who disseminates, or
 20 does not disseminate, registrant information or sex offender information in
 21 good faith compliance with the requirements of this section shall be immune
 22 from criminal and civil liability for the dissemination or lack thereof.

23 (b) Any person, including an employee of a sheriff's office, acting in good faith in
 24 disseminating, or not disseminating, information previously disseminated by
 25 the Department of Kentucky State Police shall be immune from criminal and
 26 civil liability for the dissemination or lack thereof.

27 (5) The cabinet shall establish a toll-free telephone number for a person to call to learn

1 the identity of the Web site created in this section and the location of public access
 2 to the Web site in the county where the person resides.

3 (6) In addition to the Web site, a local law enforcement agency may provide personal
 4 notification regarding the registrants located in its jurisdiction. Any notification
 5 shall contain the warning specified in subsection (3) of this section.

6 ➔Section 7. The following KRS sections are repealed:

7 17.171 Application of KRS 17.170 to DNA evidence in cases involving minors.

8 17.172 Application of KRS 17.170 to DNA evidence in burglary cases.

9 17.173 Application of KRS 17.170 to DNA evidence in capital cases and certain felony
 10 cases.

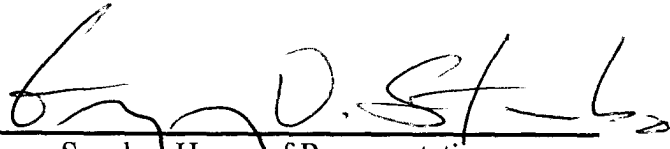
11 17.174 Application of KRS 17.171 and 17.172 to public offenders.

12 17.177 Effective dates and implementation of legislation relating to DNA testing.

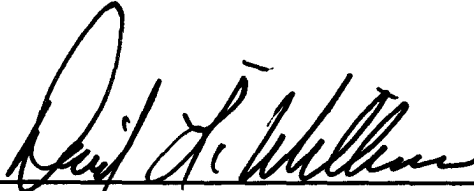
13 ➔Section 8. It is the intent of the General Assembly that the Department of
 14 Kentucky State Police may retain all DNA samples collected on or after July 1, 2008,
 15 pursuant to 2008 Ky. Acts, ch. 9 to 16.

16 ➔Section 9. It is the intent of the General Assembly that the Department of
 17 Kentucky State Police may utilize DNA samples collected on or after July 1, 2008,
 18 pursuant to 2008 Ky. Acts, ch. 9 to 16 for the purposes specified therein.

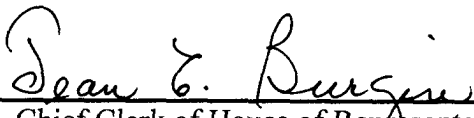
19 ➔Section 10. Whereas the effective and efficient protection of the public from
 20 crime is a fundamental duty of government and a needless delay in the implementation of
 21 this Act delays that protection, an emergency is declared to exist and this Act shall take
 22 effect upon its passage and approval by the Governor or upon its otherwise becoming
 23 law.



Speaker House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 27, 2009